

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL MALOTT,

Plaintiff,

v.

UNKNOWN LACROSSE,

Defendant.

Case No. 2:17-cv-79

HON. JANET T. NEFF

OPINION AND ORDER

On April 27, 2017, Plaintiff initiated this prisoner civil rights action, and the matter was referred to the Magistrate Judge. On January 10, 2019, Plaintiff filed a Motion to Dismiss (ECF No. 57), indicating that he “can’t prosecute or continue the case w/out discovery and since I’m being denied that th[e]n I want to drop the case” (*id.* at PageID.269). On January 11, 2019, Defendants filed a response, concurring in the motion and requesting dismissal “with prejudice” (ECF No. 58). On January 17, 2019, the Magistrate Judge issued a Report and Recommendation (R&R), recommending that this Court grant Plaintiff’s motion and dismiss this action with prejudice (ECF No. 59). The matter is presently before the Court on Plaintiff’s January 28, 2019 Objection to the Report and Recommendation (ECF No. 61). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objection has been made.

In his objection, Plaintiff requests that the Court “not dismiss my case,” that he was “intimidated into the dismissal” (ECF No. 61 at PageID.282). In light of the contradictory

positions taken by Plaintiff, the Court will consider Plaintiff's motion to dismiss withdrawn and refer this matter to the Magistrate Judge for further proceedings, as appropriate. Therefore:

IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss (ECF No. 57) is WITHDRAWN.

IT IS FURTHER ORDERED that the Report and Recommendation (ECF No. 59) and Objection thereto (ECF No. 61) are DISMISSED AS MOOT.

Dated: February 6, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge